

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

ASCENTIAL SOFTWARE CORPORATION,

Plaintiff,

v.

RUSSELL DODSON,

Defendant.

Civil Action No.

**04-40130**

**NOTICE OF REMOVAL**

TO THE CLERK OF THE COURT, PLAINTIFF, AND ITS ATTORNEYS OF  
RECORD:

PLEASE TAKE NOTICE that pursuant to 28 U.S.C. § 1441(a), Defendant Russell  
Dodson hereby removes to this Court the state court action described below on the following  
grounds:

1. Defendant Russell Dodson ("Dodson") is the sole, existing named defendant in a  
civil action filed on or about June 23, 2004, in the Superior Court of the  
Commonwealth of Massachusetts for the County of Worcester, Case Number 04-  
1189, entitled Ascential Software Corporation v. Russell Dodson. A true and  
correct copy of the Verified Amended Complaint filed by plaintiff Ascential  
Software Corporation ("Ascential") in the state court is attached hereto as Exhibit  
A.
2. On or about June 23, 2004, Ascential also filed an Amended Motion for  
Preliminary Injunction, which is set for hearing on July 12, 2004. True and

**FILING FEE PAID:**

RECEIPT # 404361

AMOUNT \$ 50.00

BY DPTY CLK RH

DATE 7-9-04

correct copies of Ascential's Amended Motion for Preliminary Injunction and Memorandum in Support of Its Motion for Temporary Restraining Order and Preliminary Injunction are attached hereto as Exhibit B.

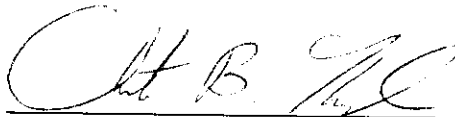
3. Attached as Exhibit C are copies of all other process, pleadings, and orders received by Dodson with regard to the state action described in paragraph 1 above.
4. This Court has diversity jurisdiction over this action pursuant to 28 U.S.C. § 1332, because Dodson is an individual residing in Texas and Ascential is a Delaware corporation with its principal place of business in Massachusetts. See Exhibit A at ¶¶ 8, 9 (Verified Amended Complaint).
5. It is apparent from the face of the Verified Amended Complaint, which references two separate potential sales of enterprise data integration software, that plaintiff's claims exceed \$75,000.00. See Exhibit A at ¶¶ 7, 12-14, 28-36, Prayer for Relief (Verified Amended Complaint). Further, the amount of money Dodson stands to lose if Ascential is granted the injunctive relief it seeks exceeds \$75,000.00. See Declaration of Russell Dodson In Support of Notice of Removal at ¶ 2, attached as Exhibit D hereto. As a result, the amount-in-controversy requirement of diversity jurisdiction is met. See 28 U.S.C. § 1332.
6. As a result of the foregoing, this action is a civil action over which this Court has original jurisdiction under 28 U.S.C. § 1332, and is one which may be removed to this Court by Dodson pursuant to the provisions of 28 U.S.C. § 1441(b), in that it is a civil action between a citizen of a state and a citizen of a foreign state, and the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs based on the face of the Complaint.
7. Dodson was served with the summons and complaint in this action on June 28, 2004. Removal is therefore timely. See 28 U.S.C. § 1446(b).

8. This action is properly removed to this Court under 28 U.S.C. §§ 1441(a) and 1446(a) because the state court action is pending in Worcester County, Massachusetts, which lies within this District.

Respectfully submitted,

RUSSELL DODSON

By his attorneys,



James S. Dittmar, P.C. (BBO #126320)

Robert M. Hale (BBO #217710)

Christopher B. Kaczmarek (BBO #647085)

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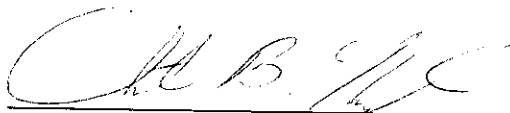
Facsimile: (415) 875-6700

Dated: July 9, 2004

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on July 9, 2004, a true and correct copy of the *Notice of Removal* was served by hand upon the following:

Daniel E. Rosenfeld, Esq.  
Amy B. Abbott, Esq.  
Kirkpatrick & Lockhart, LLP  
75 State Street  
Boston, MA 02109

A handwritten signature in cursive script, appearing to read "C.B. Kaczmarek", written over a horizontal line.

Christopher B. Kaczmarek

04-40130

## CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

ASCENTIAL SOFTWARE CORPORATION

(b) County of Residence of First Listed Plaintiff Worcester  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Daniel E. Rosenfeld  
Kirkpatrick & Lockhart  
75 State Street  
Boston, MA 02109 (617) 261-3100

## DEFENDANTS

RUSSELL DODSON

County of Residence of First Listed Defendant  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED

Attorneys (If Known) James S. Dittmar, P.C. (BBO #126320)  
Robert M. Hale, P.C. (BBO #217710)  
Christopher B. Kaczmarek (BBO #647085)  
Goodwin Procter LLP  
Exchange Place  
Boston, MA 02109 (617) 570-1000

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☐ 3 Federal Question (U.S. Government Not a Party)  
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☐ 1 ☐ DEF 1 Incorporated or Principal Place of Business In This State ☒ 4 ☐ DEF 4  
Citizen of Another State ☐ 2 ☒ 2 Incorporated and Principal Place of Business In Another State ☐ 5 ☐ 5  
Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

## IV. NATURE OF SUIT (Place and "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (13 95 ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIW C/DIW W (405 (g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organization <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentences Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 535 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<b>FEDERAL TAXSUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

(PLACE AN "X" IN ONE BOX ONLY)

## V. ORIGIN

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

(Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity)

28 U.S.C. § 1332- Suit alleging breach of a non-competition covenant in an employment agreement.

## VII. REQUESTED IN COMPLAINT

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMANDS** Greater than \$75,000 **CHECK YES only if demanded in complaint** JURY DEMAND: ☒ Yes ☐ NoVIII. RELATED CASE(S) IF ANY (See instructions):  
None.

JUDGE

DOCKET NUMBER

DATE July 9, 2004  
FOR OFFICE USE ONLY

SIGNATURE OF ATTORNEY OF RECORD

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

**04-40130**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Ascential Software Corporation v. Russell Dodson
2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(2)).
- ☐ I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- ☐ II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820\*, 830\*, 840\*, 850, 890, 892-894, 895, 950.
- ☒ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.
3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court  
None.
4. Has a prior action between the same parties and based on the same claim ever been filed in this court?
- YES ☐ NO ☒
5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC § 2403)
- YES ☐ NO ☒
- If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?
- YES ☐ NO ☐
6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?
- YES ☐ NO ☒
7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? – (See Local Rule 40.1(d)).
- A. If yes, in which division do all of the non-governmental parties reside?
- YES ☒ NO ☐
- Eastern Division ☐ Central Division ☒ Western Division ☐
- B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?
- Eastern Division ☐ Central Division ☐ Western Division ☐
8. If filing a Notice of Removal – are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)
- See attachment.
- YES ☒ NO ☐

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Christopher B. Kaczmarek, Esq.

ADDRESS Goodwin Procter LLP, Exchange Place, Boston, MA 02109

TELEPHONE NO. 617-570-1000